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SIPDIS

SENSITIVE

STATE FOR EB/IPE AND EAP/BCLTV  
STATE ALSO PASS USTR BURCKY/ALVAREZ AND BRYAN  
STATE ALSO PASS USPTO FOR URBAN  
STATE ALSO PASS LIBRARY OF CONGRESS FOR TEPP  
USDA FOR FAS/FAA/AO HUETE  
USDOC FOR 4431/MAC/AP/OPB/VLC/HPPHO

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [ECON](#) [EINV](#) [VM](#) [IPROP](#)

SUBJECT: VIETNAM: AMBASSADOR HOSTS IPR ROUNDTABLE WITH U.S. INDUSTRY

1. (U) Summary. Borrowing a good idea from colleagues in Beijing, on April 28, the Ambassador hosted Mission Vietnam's first-ever Roundtable on Intellectual Property Rights (IPR) Issues in Vietnam. In both formal presentations and during open discussion, U.S. companies and industry representatives provided insights on their specific experiences, both successes and problems, with IPR protection, enforcement and market access in Vietnam. Participants highlighted the need for: improved market access and distribution rights, changes to key aspects of Vietnam's draft IPR Law, a single authoritative point of contact for IPR enforcement, deterrent-level criminal and civil penalties, more public awareness and education on IPR, and promulgation of optical disk regulations in Vietnam. The Ambassador encouraged participants to keep the U.S. Mission informed about their activities, problems and the message they are conveying to the GVN on IPR issues. The Ambassador advised the representative of the newly established Vietnam Anti-Counterfeiting and Intellectual Property Protection Association (VACIP) to report regularly to senior level GVN officials on the business sector's perspective on IP in Vietnam. At the conclusion of the Roundtable, the Ambassador hosted a lunch for Roundtable participants, Vietnamese private sector representatives and GVN officials, focused on the theme of public/private partnerships in IP enforcement. End Summary.

2. (SBU) On April 28, The Ambassador hosted a Roundtable on Intellectual Property Rights Issues, with the participation of nineteen companies and industry associations active in Vietnam. Representatives of Proctor and Gamble, Nike, Time Warner and Baker and McKenzie presented on their companies' experiences, successes and problems with IPR enforcement and market access in Vietnam. Representatives of the USAID-funded Support for Trade Acceleration (STAR) Project and the U.S. Vietnam Trade Council (USVTC) summarized U.S. Government-supported IPR-related technical assistance in Vietnam. Robert Stoll, Director of Enforcement at the U.S. Patent and Trademark Office (USPTO), Econoffs from Hanoi and HCMC, Commercial Officer, and the USAID Country Manager also participated in the event.

#### Lengthy Process Inhibits Enforcement

3. (SBU) Companies cited the "time-consuming" nature of the enforcement process as a serious impediment to effective enforcement in Vietnam. Nike and Proctor and Gamble (P&G), which have worked with provincial enforcement agencies on multiple counterfeiting cases, both highlighted that it takes months to obtain decisions in enforcement cases. Nike's representative explained that there are too many steps and too many actors involved in reaching a decision. After receiving a complaint, enforcement agencies have to check facts, report to superiors, and obtain approval both internally and from the National Office of Intellectual Property (NOIP) before they can take action. In several of P&G's trademark infringement cases, the company waited from three to six months for enforcement agencies to issue penalty decisions and destroy counterfeit products. This delay in resolution gives counterfeiters time to destroy and/or sell the infringed products, change locations and restart their business.

4. (SBU) Companies cited numerous additional problems contributing to the slow resolution of intellectual property cases, including: overlapping responsibilities of enforcement agencies, lack of cooperation among enforcers, inconsistent enforcement actions, and lack of provisions to implement existing laws. Both Nike and P&G emphasized the need for the GVN to establish a single, authoritative point of contact for enforcement cases and to make the enforcement process more transparent. These steps would help shorten the time it takes to enforce companies' IPR.

#### Penalties Too Low to Deter Infringement

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15. (SBU) Participating companies voiced strong concerns about the lack of penalties significant enough to deter IPR infringement. Civil and administrative penalties are very low. According to Nike, the maximum statutory penalty for trademark infringement is only VND 100 million (about USD 6,329), and authorities rarely assess infringers the maximum amount. Counterfeiters pay the fine and continue to produce knock-offs. An attorney with Baker and McKenzie noted the draft of Vietnam's new IPR law includes a provision for penalties up to VND 200 million (USD 12,658), but added this would still be too low. DVD shops, for example, have the potential to earn USD 10,000 a month, making a USD 12,000 to USD 13,000 penalty a "drop in the bucket." Additionally, he noted that the GVN has only applied criminal penalties in industrial property cases involving the production of "dangerous products" and has never applied criminal penalties in any copyright piracy cases. He suggested that the GVN should include provisions for landlord liability in the IPR law. Many shops selling counterfeit or pirated goods are rented; holding real estate owners liable for tenants' actions could reduce the number of shops rented to illegitimate businesses.

#### Market Access Issues Impede Expansion

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16. (SBU) Companies in the entertainment industry emphasized that improvements in market access are as important as anti-piracy efforts to facilitate their entry into Vietnam's market. Movies, music and other entertainment products are labeled "cultural products" by the GVN and are therefore subject to regulation and censorship. Film distributors are required to notify the GVN of the products they want to market in Vietnam a year in advance. These products then undergo a lengthy review before being allowed into the Vietnamese market; some products are banned altogether. Time Warner's representative emphasized that this review process is seemingly arbitrary and lacks transparency and a clear timeline for decisions. There is also a complete lack of legitimate distribution channels in Vietnam, which severely limits market penetration of legitimate products. (Note: Representatives of consumer product and pharmaceutical companies also cited limitations on distribution and retail sales as problematic for their industries in Vietnam. End Note.)

17. (SBU) While the GVN's market access limitations and censorship keep out legitimate products, pirates are able to supply unmet local market demand with pirated goods. The combination of market access barriers and the very high rate of optical disk piracy have left the entertainment industry pessimistic about short-term prospects for doing business in Vietnam. (Note: Representatives of both the movie and the recording industries estimated 100 percent piracy for American products in Vietnam. End Note.) To facilitate entry, companies advocated loosening restrictions on investment in production and distribution of cultural products, reducing tariffs, eliminating quantitative restrictions on imports, and making censorship, licensing and registration processes for cultural products more transparent. They also cited the promulgation of optical disk regulations as a top priority to address weak copyright enforcement. Optical disk regulations help identify legitimate factories and products through the use of source identification (SID) codes. These codes make it easier to pursue both criminal and criminal action against pirates.

#### Public outreach

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18. (SBU) Several companies highlighted the need for more public awareness on IPR issues in Vietnam. Pepsi's representative cited the need to create public consensus for IP protection in Vietnam, noting that he believes the general public does not view counterfeiting and piracy as criminal acts. Pepsi suggested it would be useful to persuade the GVN to include IP issues in school curriculum. Robert Stoll, Director of the Office of Enforcement at USPTO noted that companies can wage effective public awareness campaigns, including recognition of officials who act effectively to enforce IPR. Microsoft's representative added that a key part of the message the U.S. Government and companies need to send out is that IPR protection also benefits the companies and people of Vietnam.

#### Industry input on IP Law

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19. (SBU) Baker and McKenzie briefed participants on the recent establishment of the Vietnam Anti-Counterfeiting and Intellectual Property Protection Association (VACIP) for foreign-invested enterprises in Vietnam. Modeled on the Quality Goods Brand Protection Committee (QBPC) in China, VACIP will serve as a collective voice for industry on IP

issues and work with the GVN to improve IPR enforcement. VACIP plans to send the GVN a position paper with recommendations for changes to the draft law on IPR and is likely to highlight the need for: more effective criminal, civil and administrative penalties; provisions for Internet service providers (ISPs) and corporate liability for copyright piracy; a shortening of cancellation and opposition procedures for trademarks; improved handling of well-known marks; stricter border measures; and regulations for assessing damages in trademark cases involving unfair competition. The GVN plans to promulgate the new IPR law later this year.

#### Next Steps

10. (U) At the conclusion of the Roundtable, the Ambassador emphasized that the Mission will continue to act as a strong advocate for companies' market access and IP concerns. He committed to sending a letter to Deputy Prime Minister Vu Khoan highlighting key points raised during the Roundtable and requesting that the DPM open a dialogue on IP issues. He encouraged companies to support VACIP and suggested VACIP report regularly on the business sectors' IP priorities to the most senior officials in the GVN.

#### Lunch with GVN Public and Private Sector

11. (U) Following the Roundtable, the Ambassador hosted a lunch for participants, Vietnamese private sector representatives, and GVN officials active on IPR issues. Robert Stoll from the USPTO and Timothy Trainer, President of the Washington-based Global Intellectual Property Strategy Center, spoke about the benefits of public/private partnerships in IPR enforcement.

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